

Proposed new regulation.

4VAC15-410.
Watercraft: Boating Safety Education.

Language of Proposed Regulation:

CHAPTER 410

WATERCRAFT: BOATING SAFETY EDUCATION

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4VAC15-410-10. Application.

This chapter applies to all operators of a motorboat with a motor of 10 horsepower or greater or personal watercraft on the public waters of the Commonwealth. However, the provisions of this chapter shall not apply to law enforcement officers while they are engaged in the performance of their official duties.

4VAC15-410-20. Definitions.

As used in this chapter, unless the context clearly requires a different meaning, the following words and terms shall have the following meanings:

“Approved Course Provider” is any individual, business, or organization that instructs or provides a boating safety education course approved by the National Association of State Boating Law Administrators and accepted by the Department. An approved course

provider shall have executed and have on file a valid cooperative agreement with the Department.

“Board” means the Board of Game and Inland Fisheries.

“Boating Safety Education Course” means a course offered in the classroom, through the internet, or through an electronic format such as CD-ROM that provides a course content and test questions that have been reviewed and approved by the National Association of State Boating Law Administrators in accordance with the National Boating Education Standards and accepted by the Department. A boating safety education course shall include no less than 50 test questions which shall include at least 10 test questions specific about Virginia boating laws.

“Department” means the Department of Game and Inland Fisheries.

“Dockside Safety Checklist” means a document provided by the Department that consists of selected facts about Virginia boating laws and safe boat operation that a rental or livery agent or motorboat leasing business is required to present to those who rent or lease a motorboat. The Dockside Safety Checklist must be reviewed and initialed by the person operating the motorboat before the boat can be rented/leased and operated.

“Equivalency Exam” means a written examination that is developed by the Department to test the knowledge of information included in the curriculum of a boating safety education course (may also be referred to as a challenge exam). The equivalency exam is intended to provide experienced and knowledgeable boaters with the opportunity to meet the boating safety education compliance requirement set forth in Code of Virginia § 29.1-735.2 without having to take and successfully complete a boating safety education course. The equivalency exam shall be comprised of no less than 75 or more than 100 test questions, shall include no less than 25 questions specific about Virginia boating laws, and shall be proctored by an individual(s) specifically designated by the Department. A minimum score of at least 70 percent shall be considered passing.

“Motorboat” means any vessel propelled by machinery whether or not the machinery is the principal source of propulsion and for this chapter shall mean with a motor of 10 horsepower or greater.

“NASBLA” means the National Association of State Boating Law Administrators.

“NASBLA Approved Course” means a boating safety education course that has been reviewed and approved by NASBLA.

“Onboard Direct Supervision” as referenced in Code of Virginia § 29.1-735.2.B.6 and 9 occurs when a person maintains close visual and verbal contact with, provides adequate direction to, and can immediately assume control of a motorboat from the operator of a motorboat. A person who is water skiing, or is in the cabin of a motorboat and not at the helm/wheel is not considered to be in direct supervision.

“Operate” means to navigate or otherwise control the movement of a motorboat or vessel.

“Optional Virginia Boater Education Card” means a card authorized for issuance by the Department to persons who can show that they have met the minimum standard of boating safety education course competency or possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator’s Card or possesses a commercial fisherman registration pursuant to § 28.2-241.

“Personal Watercraft” means a motorboat less than sixteen feet in length which uses an inboard motor powering a jet pump as its primary motive power and which is designed to be operated by a person sitting, standing, or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

“Proctored” means that the written equivalency exam has been administered under the direct supervision of (i) a designated member of the United States Coast Guard Auxiliary or the United States Power Squadrons®, (ii) a designated Department employee, or (iii) an individual who has been approved for such purpose by the Department.

“Temporary Operator’s Certificate” means a nonrenewable document issued with the certificate of number for the motorboat, if the boat is new or was sold with a transfer of ownership. A temporary operator’s certificate shall be issued only by the Department, by any person authorized by the Director to act as an agent to issue a certificate of number pursuant to Code of Virginia § 29.1-706, or by a license agent of the Department authorized to issue a temporary registration certificate for a motorboat. A temporary operator’s certificate shall allow the owner(s) to operate a motorboat with a motor of 10 horsepower or greater or personal watercraft in Virginia for 90 days.

“Vessel” means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

“Waters of the Commonwealth” means any public waters within the territorial limits of the Commonwealth.

4VAC15-410-30. Compliance schedule and phase-in provisions.

The requirements for boating safety education shall be phased-in according to the following provisions:

1. Personal watercraft operators 20 years of age or younger shall meet the requirements by July 1, 2009;
2. Personal watercraft operators 35 years of age or younger shall meet the requirements by July 1, 2010;

3. Personal watercraft operators 50 years of age or younger and motorboat operators 20 years of age or younger shall meet the requirements by July 1, 2011;
4. All personal watercraft operators, regardless of age, and motorboat operators 30 years of age or younger shall meet the requirements by July 1, 2012;
5. Motorboat operators 40 years of age or younger shall meet the requirements by July 1, 2013;
6. Motorboat operators 45 years of age or younger shall meet the requirements by July 1, 2014;
7. Motorboat operators 50 years of age or younger shall meet the requirements by July 1, 2015;
8. All motorboat operators, regardless of age, shall meet the requirements by July 1, 2016.

4VAC15-410-40. Provisions for compliance and minimum standards for boating safety education course competency.

A. A person shall be considered in compliance with the requirements for boating safety education if he meets one or more of the following provisions pursuant to Code of Virginia § 29.1-735.2.B.1-9:

1. Completes and passes a boating safety education course;
2. Passes an equivalency exam;
3. Possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card;
4. Possesses a temporary operator's certificate;
5. Possesses a rental or lease agreement from a motorboat rental or leasing business, which lists the person as the authorized operator of the motorboat;
6. Operates the motorboat under onboard direct supervision of a person who meets the requirements of this section;
7. Is a non-resident, is temporarily using the waters of Virginia for a period not to exceed 90 days, and meets any applicable boating safety education requirements of the state of residency, or possesses a Canadian Pleasure Craft Operator's Card;

8. Has assumed operation of the motorboat due to the illness or physical impairment of the initial operator, and is returning the motorboat to shore in order to provide assistance or care for the operator;

9. Is registered as a commercial fisherman pursuant to Code of Virginia § 28.2-241 or is under the onboard direct supervision of the commercial fisherman while operating the commercial fisherman's boat.

B. The minimum standards for boating safety education course competency required by the Department are:

1. Successful completion of a classroom boating safety education course in person and a passing score of at least 70 percent on a written test administered **closed-book** at the conclusion of the course by the designated course instructor(s) or other designated course assistant; or

2. Successful completion of a classroom boating safety education course in person and a passing score of at least 90 percent on a written test administered **open-book** at the conclusion of the course by the designated course instructor(s) or other designated course assistant; or

3. Successful completion of a boating safety education course offered through the Internet or through an electronic format such as CD-ROM and a passing score of at least 90 percent on a self-test administered in conjunction with the course material; or

4. A score of at least 70 percent on a proctored equivalency exam.

4VAC15-410-50. Boating safety education course provider requirements.

A. To be an approved course provider, any individual, business, or organization that instructs or provides a boating safety education course shall execute and have on file a cooperative agreement with the Department. It shall be the responsibility of the State Boating Law Administrator to develop and execute such agreements. A list of approved course providers and boating safety education courses shall be kept by the Department and made available to the public. Such list does not constitute any endorsement of any course or course provider by the Department or the Board.

B. As of January 1, 2009, boating safety education courses offered through the Internet and accepted by the Department shall:

1. Be approved by NASBLA in accordance with the National Boating Education Standards for course content/testing;

2. Be provided only by an approved course provider who has executed a valid cooperative agreement with the Department. Such agreements may be amended at any time by the Department and may be cancelled with thirty (30) days notice upon failure of

the course provider to comply with the terms and conditions of the agreement or its amendments;

3. Be formatted and made available to the student only in instructional/training modules;

4. Consist of no less than six (6) instructional/training modules with each module having no less than ten (10) test questions, randomly selected from a pool of questions that contains at least three (3) times the number of questions presented in the module test in 2009 and four (4) times the number of questions presented in the module test in 2010 and each following year;

5. Allow for the student to advance through the modules only in a sequential, chronological order and only upon successful completion of the test questions for the module. Successful completion shall be by a score of at least 90 percent correct on the test questions;

6. Be designed so that the student should spend at least 6 hours of active involvement in completing the course. Completing the course shall include familiarization with the course material, completion of any review questions, and completion of the test questions. The course design shall also include the provision of at least fifty (50) separate web pages of course content and material for presentation to the student. Active involvement shall require the student to click on a “Next” or “Forward” button to progress through the course material;

7. Be designed so that the student is directed to repeat the entire module if the student has not scored at least 90 percent correct on the test questions for that module. The student shall also be provided with a reference to the applicable course text material for any missed questions on the module test;

8. Be designed to promote the presentation, understanding and comprehension of boating safety information and safe practices and not the simple completion of an end-of-course test.

C. Any material and/or products to be used by an approved course provider that make reference to the Department must be approved by the Department, through the State Boating Law Administrator, before publishing and/or distribution to the public.

D. Any fees charged by a course provider are set by the course provider, but must be clearly communicated to the student prior to taking the course.

4VAC15-410-60. Boating safety education course availability.

A. The Department shall coordinate with the United States Coast Guard Auxiliary, the United States Power Squadrons, and any other approved course provider so that classroom-based boating safety education courses are available across the Commonwealth throughout the year.

B. The Department shall coordinate with approved course providers of internet-based courses so that courses developed and offered in accordance with 4VAC15-410-50 subsection B are available.

C. The Department shall make testing opportunities for the proctored equivalency exam available on a statewide basis throughout the year.

4VAC15-410-70. Boating safety education course certificates.

A. Upon successful completion of a boating safety education course, the approved course provider shall provide the student with a course certificate and/or pocket-size card. At a minimum, such certificate/card shall include the student's name and date of birth, the issuance date, the name of the course, and indication of NASBLA course approval and acceptance by the Department. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider shall provide a record to the Department of those students issued a course certificate and/or pocket-size card. Upon request by the student and subject to verification of successful course completion, it shall be the responsibility of each approved course provider to issue duplicate certificates/cards.

B. Upon successful completion of the proctored equivalency exam, the Department shall issue a completion certificate and/or card which shall include the person's name, date of birth, and the issuance date. Upon request by the person to whom the certificate/card was originally issued and subject to verification of successful completion, the Department shall issue a duplicate certificate/card.

4VAC15-410-80. Recordkeeping and student records

A. The Department shall maintain a database of all students successfully completing the Department's classroom-based boating safety education course and all persons successfully completing the equivalency exam. Such database shall include, but not be limited to, student name, address, date of birth, course/equivalency exam completion date, and the specific name of the course. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider for other classroom-based boating safety education courses shall provide a record to the Department of those students successfully completing such course and the Department may add this information to the student database. A change in student address will be made only upon receipt of a written request from the affected student.

B. Each approved course provider for boating safety education courses offered over the Internet or through an electronic format such as CD-ROM shall maintain a database of all students successfully completing such course. The database shall include, but not be limited to, student name, address, date of birth, course completion date, and the specific name of the course. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider shall provide a record to the

Department of those students successfully completing their course. Such record shall include the database information referenced in this section. It shall be the responsibility of each approved course provider to ensure that reasonable measures, such as the Payment Card Industry (PCI) data security measures, are taken to protect any acquired student data. Further, such data shall not be sold or otherwise used in any way except for the student's own completion of a boating safety education course and issuance of course completion documents.

4VAC15-410-90. Instructor certification.

A. To be certified as a boating safety education course instructor for the Department's classroom-based boating safety education course, a person shall have successfully completed a classroom-based boating safety education course and be certified as an instructor by the United States Coast Guard Auxiliary, or the United States Power Squadrons, or the National Safe Boating Council, or another certification program accepted by the Department.

B. Applicants for certified instructor shall submit an application to the Department on a form and in a manner determined by the State Boating Law Administrator. At a minimum, the application shall include:

1. The applicant's name;
2. The applicant's street address;
3. The applicant's telephone number;
4. The applicant's e-mail address, if any;
5. Information describing the applicant's experience and training in

boating safety and seamanship and proof of completion of a NASBLA approved boating safety education course; and

6. Any other information deemed necessary after review of the initial application.

C. Applicants may be required to submit a written consent for a criminal history background check in a manner determined by the Law Enforcement Division of the Department.

4VAC15-410-100. Provisions for open-book tests for classroom courses.

A. A boating safety education course offered in a classroom setting by either the Department or an approved course provider shall offer the student the option of taking the end-of-course exam either closed-book or open-book. The minimum standards for boating safety education course competency shall be as provided for in 4VAC15-410-40 subsections B.1 and 2.

B. In taking the exam open-book, the student may use the course text, instructor handouts, any related course material, and any personal notes taken during the class instruction to assist in the completion of the exam. The exam must be completed in a single session with a time limit not to exceed two (2) hours.

4VAC15-410-110. Equivalency exam criteria.

A. The Department shall develop and make available a written equivalency exam to test the knowledge of information included in the curriculum of a boating safety education course. Such exam shall provide experienced and knowledgeable boaters with the opportunity to meet the boating safety education compliance requirement set forth in § 29.1-735.2 of the Code of Virginia without having to take and successfully complete a boating safety education course.

B. The equivalency exam shall be proctored by an individual(s) specifically designated by the Department. The use of reference materials shall not be allowed while the exam is being administered and the exam shall be completed in a single session with a time limit not to exceed three (3) hours.

C. The equivalency exam shall be comprised of no less than 75 or more than 100 exam questions and a minimum score of at least 70 percent shall be considered passing. Upon successful completion, an exam certificate and/or card shall be issued to the person completing the exam.

4VAC15-410-120. Requirements for motorboat rental and leasing businesses and the dockside safety checklist program.

A. Any person, business, or organization that provides a motorboat with a motor of 10 horsepower or greater or personal watercraft for rent or lease shall provide the rental/lease boat operator with a Dockside Safety Checklist provided by the Department. Other persons authorized to operate such boat shall also be provided with the Dockside Safety Checklist.

B. A Dockside Safety Checklist shall consist of selected facts about Virginia boating laws and safe boat operation.

C. The authorized operator(s) of the rental/leased boat shall review and initial each item in the Dockside Safety Checklist before they may operate the boat being rented or leased.

D. The Dockside Safety Checklist for the authorized operator(s) shall be retained on board the boat being rented or leased, along with the rental or lease agreement from the motorboat rental or leasing business, when the boat is being operated.

E. Any person who presents documentation that he has met the minimum standards for boating safety education course competency in accordance with 4VAC15-410-40 subsection B or possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card or possesses a commercial fisherman registration pursuant to § 28.2-241 shall be exempt from the Dockside Safety Checklist requirements.

F. Pursuant to § 29.1-735.2.B.6 of the Code of Virginia, a person may be allowed to operate the rented/leased boat without completing the Dockside Safety Checklist as long as he is operating under the onboard direct supervision of a person (i) who has completed the Dockside Safety Checklist or (ii) who is otherwise exempt from the Dockside Safety Checklist requirement.

4VAC15-410-130. Temporary operator's certificate.

A. The registered owner(s) of a motorboat or personal watercraft, if the boat is new or was sold with a transfer of ownership, shall be issued with the certificate of number for the motorboat or personal watercraft a temporary operator's certificate that shall allow the owner(s) to operate such boat in Virginia for 90 days.

B. A temporary operator's certificate shall be issued by the Department, by any person authorized by the Director to act as an agent to issue a certificate of number pursuant to Code of Virginia § 29.1-706, or by a license agent of the Department authorized to issue a temporary registration certificate for a motorboat. A temporary operator's certificate shall not be renewable.

4VAC15-410-140. Optional Virginia Boater Education Card.

A. The Department may establish an optional Virginia Boater Education Card for issuance to persons who can show that they have met the minimum standard of boating safety education course competency or who possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card or possesses a commercial fisherman registration pursuant to § 28.2-241.

B. To obtain an optional Virginia Boater Education Card, a person must provide to the Department (i) a completed application on a form provided by the Department. The application shall require the applicant's name, current mailing address, and date of birth. The applicant must also sign a statement declaring that statements made on the form are true and correct and that all documents submitted with the form are true and correct copies of documents issued to the applicant. Incomplete applications will be returned to the applicant; (ii) a copy of the documentation (such as the boating safety education course completion certificate/wallet card or equivalency exam completion certificate/card) that indicates that the minimum standards for boating safety education course competency have been met. Such documents must contain the name of the individual applying for the Virginia Boater Education Card. The Department may require the applicant to provide the original document in the event that the copy submitted with the application is illegible or if the authenticity of the copy is not certain.

C. Upon receipt by the applicant, the optional Virginia Boater Education Card will serve in lieu of any other certificates or cards that have been issued to the bearer as a result of

meeting the minimum standards for boating safety education course competency. As such, the Virginia Boater Education Card will not be transferable or revocable and will have no expiration date.

D. A person may apply, on a form provided by the Department, for a replacement Virginia Boater Education Card. A replacement card may be issued if the original card is lost, stolen or destroyed, if misinformation is printed on the card, or if the bearer has legally changed their name. The application shall include an affidavit stating the circumstances that led to the need for replacement of the original card.

4VAC15-410-150. Fees.

A. Pursuant to Code of Virginia § 29.1-735.2 subsection E, the Board may establish fees for boating safety courses and certificates provided by the Department. Such fees shall not exceed the cost of giving such instruction for each person participating in and receiving the instruction.

B. The Department shall not charge a fee for the provision of its state course for basic boating education delivered in a conventional classroom setting.

C. Fees charged by an approved course provider for boating safety education courses are set by the course provider, but must be clearly communicated to the student prior to taking the course.

D. The fee for issuance of an optional Virginia Boater Education Card, which will serve in lieu of a previously-obtained boating safety education course certificate/card, shall be \$10. The fee for a replacement card shall be \$8.

4VAC15-410-160. Penalties.

As provided for in §§ 29.1-735.2.H and 29.1-748.B of the Code of Virginia, any person who violates any provision of this chapter shall be subject to a civil penalty of \$100. All civil penalties assessed under this chapter shall be deposited in the Motorboat and Water Safety Fund of the Game Protection Fund and used as provided for in § 29.1-701 of the Code of Virginia.

Statutory Authority

§§ 29.1-735.2 and 29.1-748 of the Code of Virginia.